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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/581,330	03/07/2007	Thomas A. Osborne	8627/I247 (PA-5573-PCT/US)	3188
48/04 7590 02/15/2011 BRINKS HOFER GILSON & LIONE/INDY/COOK BRINKS HOFER GILSON & LIONE CAPITAL CENTER, SUITE 1100 201 NORTH ILLINOIS STREET INDIANAPOLIS, IN 46204-4220				
EXAMINER				
PIERY, MICHAEL T				
ART UNIT		PAPER NUMBER		
1742				
MAIL DATE		DELIVERY MODE		
02/15/2011		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/581,330

Applicant(s)

OSBORNE, THOMAS A.

Examiner

MICHAEL T. PIERY

Art Unit

1742

—The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

THE REPLY FILED 24 January 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/Monica A Husion/
Primary Examiner, Art Unit 1742

Continuation of 11, does NOT place the application in condition for allowance because:

Applicant argues that by maintaining two outer layers, van Muiden teaches away from the desirability of providing a sheath having as small a wall thickness as possible. The examiner disagrees. Hoste's teaching is not only that the catheter has a small wall thickness but the catheter also has certain structural properties (column 2, lines 54-56). Hoste's teaching is to optimize the wall thickness in order to obtain the certain structural properties for the end use of the catheter, not just to find the smallest possible wall thickness. The two layers of van Muiden are not a teaching away from Hoste because van Muiden has found the optimal wall thickness given the desired properties of the catheter. Further, when the heat shrinking step of Hoste is applied to the braided coil of van Muiden, the two layers become one layer, thus minimizing the thickness.

Applicant argues that van Muiden provides no teaching or suggestion of a manner by which his structure can be combined with a coiled reinforcement without adding additional thickness to the wall of the catheter. The examiner disagrees. Hoste teaches it is known to combine a braid with a coil and van Muiden teaches a braid. Hoste teaches applying a braid over the coil and one in the art would readily recognize that the braid of van Muiden would be applied over the coil. Hoste further teaches compression resistance and reliable torsion stiffness are desired properties (column 2, lines 52-55) and van Muiden suggests that the compression resistance and reliable torsion stiffness are properties of his formed structure. Further, it has been held that selection of a known material (braid) for its art recognized suitability for its intended purpose (introducer sheath) is prima facie obvious (MPEP 2144.07). The combination thickness has been discussed above.

Applicant argues that the combined cited references do not teach a thin-walled catheter. The examiner disagrees. Both references teach a thin walled catheter is desirable (column 2, lines 21-29 of Hoste; column 1, lines 16-19 of van Muiden). Further, there is no indication that substituting the braid of van Muiden for the braid of Hoste would increase the thickness to a point where the catheter would be undesirable.

Applicant argues that Hoste does not teach heating the striped sleeves. Hoste teaches heating the tube after the braid has been applied. When the braid of van Muiden is substituted for the braid of Hoste, the subsequent heat shrinking step would melt the layers together.

Applicant argues that van Muiden does not teach melting the striped layers together. Hoste teaches heat shrinking the catheter assembly. When the braid of van Muiden is substituted for the braid of Hoste, the subsequent heat shrinking step would melt the layers together. Further, van Muiden suggests the layers should possess a "good bond" (column 4, lines 34-35). The two layers melted together would possess this desirable "good bond."

Applicant argues that there is no teaching or suggestion that the heat shrinking step can be carried out to achieve a braid function. The examiner disagrees. Hoste teaches heat shrinking steps (column 5, line 54-column 6, line 3) and van Muiden teaches a tube that is already a braid configuration (figure 4). Thus, when the heat shrinking step is applied to the modified Hoste reference, the braid is heated.

Applicant argues that Hoste does not teach the heating step that causes the first and second positioned sleeves to melt together to form the outer layer. The examiner disagrees. Hoste teaches using the coil as the outer layer (column 3, lines 26-28). When the coil of van Muiden is substituted for that of Hoste, the heating step forms the claimed outer layer.